IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION NO.2241 OF 2004

Mr. Sonya Parshuram Mhatre, .. Applicant

Vs

The State of Maharashtra, .. Respondent.

Mr.Ramrao Adik, senior counsel i/b Mr P.L.Sapkale, for the applicant.

Mr A.S.Gadkari, APP for the respondent.

CORAM : D.B.BHOSALE,J.

DATE : 25th AUGUST, 2004.

PC:

1. Heard Mr.Adik, learned senior counsel for the applicant and Mr.Gadkari, learned A.P.P for the respondent.

2. Leave to amend. Amendment to be carried out forthwith.

3. This application is directed against the order dated 15.5.2004 passed by the learned Addl. Sessions Judge, Kalyan, below Exhibit-52 filed in Sessions Case No.144/2003. Exhibit-52 application was filed by the applicant under section 457 of Cr.P.C for return of the revolver bearing No.B 120464 BT No.OPI0235, USA made, and the 12 bore gun, India Made, No.7733/2000. The application was rejected by the Sessions Court on the

ground that the firearms in question were used by the applicant in committing serious offence of rioting and murder. Mr Adik, learned senior counsel for the applicant, submitted that admittedly the revolver was not used by the applicant for committing the alleged offence. He invited my attention to the order dated 21.1.2004 passed by this Court while enlarging him on bail in Criminal Application No.5329 of 2003 and contended that the incident in which the applicant was involved, was very unfortunate. He further submitted that though the applicant was allegedly holding the 12 bore gun at the time of occurrence, there is nothing on record to show that he used it at the relevant time. He does not have criminal antecedents. It would not be possible for me to examine the submissions of Mr Adik, at this stage, in so far as the 12 bore gun is concerned. When I so expressed, Mr Adik did not press this application for return of the 12 bore gun and fairly stated that the applicant would be satisfied if the licensed revolver is returned to him which was admittedly not used in the alleged occurrence. It appears that the applicant holds the licence for both the firearms. Mr Gadkari, learned APP, did not controvert the statement of Mr Adik that the revolver was not used in the occurrence by the applicant. However, he submitted that though the applicant is

holding the licence for the revolver, possibility of making misuse of the revolver cannot be ruled out. There does not seem to be any dispute that the applicant holds a valid licence for the revolver. No proceedings are initiated by the respondent for cancelling the licence of the revolver. Keeping that in view and considering that the applicant did not use the revolver in the occurrence and that its a licenced revolver, I find no reason for rejecting the prayer for return of the revolver. In the circumstances, I am passing the following order.

4. The application is partly allowed. The order dated 15.5.2004, below Exhibit 52 application in Sessions Case No.144 of 2003, stands modified in the following terms.

(a) The application for return of the 12 bore gun is rejected.

(b) The Crime Branch, Kalyan, shall return the revolver bearing No.B 120464 BT NO.OPI0235, USA-made, to the applicant, on usual conditions, after verifying that the licence which he holds for the said revolver subsists and has not expired.

(c) It is open for the respondent to initiate the action against the applicant for cancellation of his licence in accordance with law, if they so desire.

. An authenticated copy of this order may be made

available to the parties.

(D.B.BHOSALE, J.)